

By: Menendez

H.B. No. 1128

Substitute the following for H.B. No. 1128:

By: Naishtat

C.S.H.B. No. 1128

A BILL TO BE ENTITLED

AN ACT

relating to consent to certain medical treatments by a surrogate decision-maker on behalf of certain inmates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 313.002(8), Health and Safety Code, is amended to read as follows:

(8) "Patient" means a person who:

(A) is admitted to a hospital;

(B) is residing in a nursing home; ~~[or]~~

(C) is receiving services from a home and community support services agency; or

(D) is an inmate of a county or municipal jail.

SECTION 2. Section 313.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

- 1 (1) the patient's spouse;
- 2 (2) an adult child of the patient who has the waiver
3 and consent of all other qualified adult children of the patient to
4 act as the sole decision-maker;
- 5 (3) a majority of the patient's reasonably available
6 adult children;
- 7 (4) the patient's parents; or
- 8 (5) the individual clearly identified to act for the
9 patient by the patient before the patient became incapacitated, the
10 patient's nearest living relative, or a member of the clergy.

11 (e) Notwithstanding any other provision of this chapter, if
12 the patient is an adult inmate of a county or municipal jail, a
13 surrogate decision-maker may not also consent to:

- 14 (1) psychotropic medication;
- 15 (2) involuntary inpatient mental health services; or
- 16 (3) psychiatric services calculated to restore
17 competency to stand trial.

18 (f) A person who is an available adult surrogate, as
19 described by Subsection (a), may consent to medical treatment on
20 behalf of a patient who is an adult inmate of a county or municipal
21 jail only for a period that expires on the earlier of the 120th day
22 after the date the person agrees to act as an adult surrogate for
23 the patient or the date the inmate is released from jail. At the
24 conclusion of the period, a successor surrogate may not be
25 appointed and only the patient or the patient's appointed guardian
26 of the person, if the patient is a ward under Chapter XIII, Texas
27 Probate Code, may consent to medical treatment.

1 SECTION 3. Section 313.005(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) If an adult patient of a home and community support
4 services agency or in a hospital or nursing home, or an adult inmate
5 of a county or municipal jail, is comatose, incapacitated, or
6 otherwise mentally or physically incapable of communication and,
7 according to reasonable medical judgment, is in need of medical
8 treatment, the attending physician shall describe the:

9 (1) patient's comatose state, incapacity, or other
10 mental or physical inability to communicate in the patient's
11 medical record; and

12 (2) proposed medical treatment in the patient's
13 medical record.

14 SECTION 4. This Act takes effect September 1, 2011.